REMARKS/ARGUMENTS

In the present application, claims 1-10 are pending. Claims 3-10 are allowed. Claims 1 and 2 were rejected. As a result of this response, claims 1-10 are believed to be in condition for allowance.

Claim Rejections under 35 USC §102

The Examiner rejected claim 1 as being anticipated by Kokko et al. (6,005,852). Specifically, the Examiner asserted that Kokko et al. discloses "employing a side channel as required to send all or a part of a total amount of data (If the number of packets to be sent exceeds a threshold – depending on the amount of data – MS 12 sends reservation request – side channel -, col 7 lines 35-39)."

Before addressing the Examiner's assertions, Applicant wishes to address the Examiner's conclusion that the Applicant's previous arguments were not persuasive. Applicant respectfully submits that, judging from the Examiner's paraphrasing of Applicants argument, the Examiner misinterprets it. Specifically, the Examiner asserts that "Applicant argues that Kokko does not disclose th [sic] use of a side channel by the MS depending on the amount of data. Examiner disagrees since Kokko discloses that should the amount of data exceeds [sic] a thresholds [sic], MS 12 request [sic] an additional channel sending a reservation request. Se [sic] col 7 lines 35-39."

The Examiner is not entirely correct when asserting that the Applicant maintains that Kokko et al. do not disclose the use of a side channel by the MS depending on the amount of data. In fact, the Applicants maintain that Kokko et al. do not disclose "employing a side channel as required to **send all or a part of a total amount of data**, depending on the total amount of the data" as is claimed. (emphasis added). Note that, it is the data itself which is claimed to be sent via the side channel.

As a result, the Examiner's subsequent justification for disagreeing with Applicant's argument misses the mark.

Specifically, claim 1 recites:

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1.   A method for operating a communication system, comprising steps of

flexibly allocating Code Division Multiple Access (CDMA) channel resources

between packet-switched shared channels and circuit-switched dedicated

channels in order to optimize system throughput; and

employing a side channel as required to send all or a part of a total amount

of data, depending on the total amount of the data. (emphasis added)

It is therefore not relevant if, as the Examiner asserts, "Kokko discloses that should the amount of data exceeds [sic] a thresholds [sic], MS 12 request [sic] an additional channel sending a reservation request. Se [sic] col 7 lines 35-39." What is relevant is that the Examiner makes no assertion that a side channel is employed to send data as is claimed.

Turning to the Examiner's assertions regarding the grounds for rejection of claim 1, the Examiner erroneously asserts that Kokko et al. disclose "employing a side channel as required to send all or a part of a total amount of data, depending on the total amount of data (If the number of packets to be sent exceeds a threshold – depending on the amount of data – MS 12 sends reservation request –side channel-, col 7 lines 35-39)". While accurately reciting the language of claim 1, the Examiner's parenthetical citation once again, in the Examiner's own words, fails to mention employing the side channel to send data as is claimed.

Quite simply, Kokko et al. does not disclose that a side channel is used for sending data as is claimed. First of all, the cited passage refers to a request, presumably for an additional channel, sent over a control channel (CCH-b). Note that it is the request, and not data, that is sent over Kokko et al.'s control channel. Furthermore, throughout Kokko et al., packet <u>data</u> is sent over a data channel, and transmission of those packets is done under the direction of <u>messages</u> exchanged over the control channel (see claims 1-23). Nowhere in Kokko et al. is there seen disclosure that the <u>messages</u> also include any <u>data,</u> or that the <u>data</u> is sent on any channel other than a data channel. Kokko et al.'s terminology unequivocally differentiates data from messages and the reference does not teach or suggest employing a side channel to send all or part of a total amount of data as recited in claim 1.

It is therefore evident that Kokko et al. does not disclose employing a side channel to send all or a part of a total amount of data as claimed in claim 1. Kokko et al. in fact teach away

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from using a side channel for data, in that when Kokko et al. has additional data, they use a control channel CCH-b to request a data channel, not to send their additional data. As a result, claim 1 is believed to be in condition for allowance.
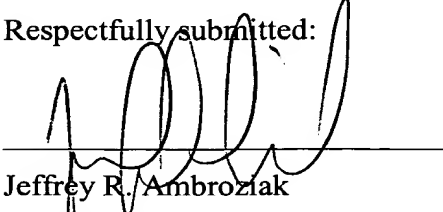
Claim Rejections under 35 USC §103

The Examiner rejected claim 2 as being unpatentable over Kokko et al. in view of Rotstein. Rotstein is not seen to teach or suggest the above noted element of claim 1, and the Examiner does not assert that it does. Therefore, the combination of Kokko and Rotstein, such a combination neither suggested nor deemed appropriate, also fails to render obvious the above element of claim 1, which is deemed patentable over the cited art. Claim 2 depends from claim 1 and should be patentable for that reason.

An earnest and thorough attempt has been made by the undersigned to resolve the outstanding issues in this case and place same in condition for allowance. If the Examiner has any questions or feels that a telephone or personal interview would be helpful in resolving any outstanding issues which remain in this application after consideration of this amendment, the Examiner is courteously invited to telephone the undersigned and the same would be gratefully appreciated.

It is submitted that the claims herein patentably define over the art relied on by the Examiner and early allowance of same is courteously solicited.

Respectfully submitted:

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